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MASTER AGREEMENT FOR ADVANCED SOCIAL MEDIA SEARCH TRAINING

DATE: 12/12/2017

BETWEEN The Sovereign in Right of New Zealand acting by and through the Chief Executive of the Ministry of Business, Innovation and Employment (**Ministry**)

AND ZX Security Limited of 5 Karepa Street, Brooklyn, Wellington, 6021, New Zealand (**Provider**)

SECTION A: AGREEMENT AND DETAILS

AGREEMENT

The Ministry engages the Provider, and the Provider accepts engagement by the Ministry, to provide the Goods, Services and Deliverables described below on the terms and conditions set out in this Agreement (comprising the terms set out below in this Section A, in Section B (Terms and Conditions), and in any Statement of Work).

DETAILS

Item	Details
Services	<p>The Service Provider will deliver an advanced social media training course to Ministry using false personas on social media for verification and investigation purposes, as described in the SOW.</p> <p>The Provider will provide the Services in accordance with each SOW and will:</p> <ul style="list-style-type: none">• Research topics and prepare slide deck material.• Prepare workshop material including software and module tasks.

Item	Details	
	<ul style="list-style-type: none"> • Deliver course material to Ministry employees when requested. <p>The training will be held at any of the following locations:</p> <p>Auldhause Wellington Level 8, Lumley House 11 Hunter St, Wellington 6011</p> <p>Auldhause Auckland Three Lamps 338 Ponsonby Road PO Box 214 Auckland 1140</p> <p>Auldhause Christchurch 13 Stanley Street Sydenham PO Box 2253 Christchurch 8023</p>	
Capped rates for Services	<p>The total Charges for the Services under this Agreement are capped at \$112,000 plus GST.</p> <p>The Charges will be applied in accordance with Appendix 1 to Section B.</p>	
Completion Date <i>(clause 7.1, Section B)</i>	31 March 2021	
Address for Notices <i>(clause 21.5, Section B)</i>	Ministry	Provider
	<p>Ministry of Business, Innovation and Employment 15 Stout Street PO Box 1473 WELLINGTON</p> <p>Email: [REDACTED]</p> <p>Attention: [REDACTED]</p>	<p>ZX Security Limited 5 Karepa Street Brooklyn WELLINGTON 6021</p> <p>Email: [REDACTED]@zxsecurity.co.nz</p> <p>Attention: Simon Howard</p>

SIGNED

Signed by Shayne Gray, GM Service Quality Branch)
the authorised delegate of the Chief Executive of)
the Ministry of Business Innovation and)
Employment:)



Signature

12 Dec 17

Date:

Signed for and on behalf of ZX Security Limited by:)
)



Signature

Simon Howard

Print Full Name

Director

Print Title

Date: 12/12/2017

SECTION B

TERMS AND CONDITIONS

1. **Definitions**
 - 1.1 In this Agreement, the following terms have the stated meanings:
 - Agreement** means Section A (Agreement and Details, including the cover page and signature clauses), Section B, Section C, and any Statement of Work;
 - Business Day** means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003;
 - Charges** means the charges set out in the relevant SOW or, where none are stated, the rates set out in the Details;
 - Completion Date** means the date set out in the Details (if any);
 - Confidential Information** means the terms and conditions of this Agreement, the Deliverables and all information and data (in any form) produced or acquired by the Provider or its Personnel in connection with this Agreement or the performance of the Services, and the Ministry Data;
 - Deliverables** means the deliverables (if any) described generally in the Details and more particularly in a Statement of Work and any other documents, reports or other materials produced by the Provider in the course of providing the Services;
 - Delivery Date** means the delivery date set out in the relevant SOW (if any);
 - Details** means the agreement-specific details set out in Section A;
 - Exit Services** has the meaning given in clause 8.7;
 - Goods** means the goods described generally in the Details and more particularly in a Statement of Work;
 - GST** means goods and services tax within the meaning of the Goods and Services Tax Act 1985;
 - Intellectual Property Rights** includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity, and **Intellectual Property** has a corresponding meaning;
 - Key Personnel** has the meaning given in clause 9.1;
 - Milestone** means an event or task under this Agreement to be performed at or by a particular date and time, as set out in the relevant SOW (if any);
 - Ministry Data** means all information and data (in any form) belonging to the Ministry that is acquired by the Provider or its Personnel in connection with this Agreement, the supply of the Goods and the performance of the Services and includes the Ministry's information systems and processing facilities, all data relating to the Ministry's operations and clients and all data or business knowledge about the Ministry, its Personnel, customers and suppliers;
 - Parties** means the Ministry and the Provider, including their permitted assigns;
 - Personnel** means all employees, contractors, agents and officers and includes, to avoid doubt, Key Personnel (if any);
 - Services** means the services described generally in the Details and more particularly in a Statement of Work together with all other work to be performed by the Provider to supply the Deliverables and perform its other obligations under this Agreement; and
 - Statement of Work** means a statement of work for the supply of Goods and provision of Services and Deliverables, in a form the same as or similar to the form set out in Section C and which is governed by the terms of this Agreement; and **SOW** has a corresponding meaning.
- 1.2 References to clauses and Sections are to clauses and Sections of this Agreement and references to persons include bodies corporate, unincorporated associations or partnerships.
- 1.3 The headings in this Agreement are for convenience only and have no legal effect.
- 1.4 The singular includes the plural and vice versa.
- 1.5 "Including" and similar words do not imply any limitation.
- 1.6 References to a statute include references to that statute as amended or replaced from time to time.
- 1.7 References to "NZD" or "\$" are to New Zealand currency, except where expressly stated otherwise.
- 1.8 The rule of construction known as *contra proferentem* does not apply to the interpretation of this Agreement.
- 1.9 If there is any conflict of meaning between a Statement of Work, the Details and Section B, the following order of precedence applies in descending order:
 - a. Section B;
 - b. the Details in Section A; and
 - c. the SOW,except where the relevant SOW expressly states otherwise.

2. **Statements of Work**
 - 2.1 This Agreement incorporates each SOW which is:
 - a. attached to this Agreement on signing; and
 - b. each SOW stated to be subject to this Agreement; and
 - c. signed by the Parties.
3. **Goods, Services and Deliverables**
 - 3.1 The Provider must provide the Goods, Services and Deliverables promptly, efficiently, with reasonable skill and care and using suitably skilled, experienced and qualified Personnel, in accordance with:

a. this Agreement, including the standards and Milestones and other timeframes (if any) set out in the relevant SOW (and if no timeframe is set out in the relevant SOW, within a timeframe that is reasonable in the circumstances);

b. the best currently accepted principles and practices applicable to the Goods, Services and Deliverables;

c. all applicable laws, regulations, rules and professional codes of conduct or practice, including the Employment Relations Act 2000, the Immigration Act 2009 and the Health and Safety at Work Act 2015;

d. the Ministry's security and health and safety policies and requirements where the Provider is providing any of the Goods, Services and Deliverables on the Ministry's premises; and

e. the reasonable directions of the Ministry.

3.2 The Provider must ensure that the Goods, Services and Deliverables are fit for the purpose set out in the relevant SOW (if any).

3.3 The Provider must obtain all third party consents, licences, authorisations and approvals required for it to provide the Goods, Services and Deliverables under this Agreement.

3.4 If the Goods, Services and Deliverables are not, in the Ministry's reasonable opinion, provided in accordance with this Agreement (including in accordance with any Milestone due dates set out in the relevant SOW) or are not otherwise in accordance with the Ministry's requirements, the Ministry may (without limiting its other remedies):

- a. require the Provider to remedy the deficiency immediately at the Provider's cost, including (if applicable) by replacing the Goods;
- b. withhold any payment due to the Provider until the deficiency is remedied to the Ministry's satisfaction;
- c. deduct a reasonable amount from any payment due to the Provider to reflect the deficiency; and/or
- d. reject any or all of the Goods.

3.5 The Provider must provide any Deliverable in such format, and on such medium, as is reasonably required by the Ministry.

3.6 The Provider's engagement under this Agreement is non-exclusive. The Ministry is:

- a. free to obtain services, goods or deliverables of the same or similar type from any other person or to supply those services, goods or deliverables itself; and
- b. not required to obtain any particular volume or dollar value of Goods, Services and Deliverables from the Provider.

3.7 The Provider acknowledges that the Ministry may engage other suppliers to provide goods or services that relate to or are used by the Ministry in conjunction with the Goods, Services and Deliverables. The Provider agrees to co-operate fully and collaborate in good faith with the Ministry and any external suppliers in a timely manner, including:

- a. providing information reasonably required to ensure that the Ministry and any external supplier is able to perform their relevant responsibilities and functions; and
- b. to the extent that it is within the Provider's control, achieving efficiency and reliability of services, goods and deliverables provided to the Ministry and to ensure efficient change control processes across all suppliers.

4. **Ministry inputs**

The Ministry must use reasonable efforts to provide the inputs set out in the relevant Statement of Work (if any) to the Provider in accordance with any timeframes set out in that Statement of Work (and if no timeframe is set out in the relevant Statement of Work, within a timeframe that is reasonable in the circumstances).

5. **Goods**

5.1 This clause 5 applies where the Provider supplies Goods to the Ministry under this Agreement.

5.2 The Provider must provide the Goods on or before the Delivery Date to the address set out in the relevant SOW and at a time approved in advance by the Ministry.

5.3 Where the Goods are being supplied in batches, the Provider must not enter into any commitments, arrangements or agreements in respect of a second or successive batches until the first batch has been delivered to the Ministry and the Ministry has approved in writing those Goods.

5.4 The Provider warrants:

- a. that at the time of the passing of the title in the Goods:
 - i. the Provider has the right to sell the Goods;
 - ii. the Goods are new, unless otherwise agreed by the Ministry in writing;
 - iii. the Goods are free from any charge or encumbrance in favour of the Provider or any third party;
 - iv. the Goods correspond with the description of the Goods set out in the Details and the SOW, and meet the Ministry's requirements as set out in the Details and the SOW;
 - v. the Goods are fit for the purpose set out in the SOW, if any;
 - vi. the Goods are free from all defects, whether in design, engineering, workmanship or otherwise;
 - vii. the Goods are supported by a manufacturer's warranty; and
 - viii. the Goods are of merchantable quality; and
- b. the additional warranties set out in the SOW, if any.

5.5 The Provider must transfer to the Ministry all third party warranties relating to the Goods or, if the transfer is not possible, the Provider will hold those warranties for the benefit of the Ministry.

5.6 Unless otherwise provided in the relevant SOW:

- a. title in any Goods provided to the Ministry under this Agreement will pass to the Ministry on the earlier of payment by the Ministry of the Charges for those Goods or delivery of the Goods to the Ministry in accordance with this Agreement; and
- b. risk in the Goods will pass to the Ministry upon delivery of the Goods to the Ministry, provided that the delivery is received and signed for by an authorised representative of the Ministry.

6. **Charges and invoicing**

6.1 Subject to clauses 3.4, 6.3, 6.4 and 6.5, the Ministry must pay the Charges at the rates set out in the relevant SOW for the provision of the Goods, Services and Deliverables, provided that those rates must not exceed the capped rates (if any) set out in the Details. The Charges are the total amount payable by the Ministry for the provision of Goods, Services and Deliverables under this Agreement.

6.2 The Provider must provide a valid GST invoice to the Ministry for all Charges due in the manner set out in the SOW. The invoice must include:

- a. details of the Goods, Services and Deliverables to which the invoice relates; and
- b. sufficient information to enable the Ministry to validate the claim for payment.

6.3 The Ministry is not obliged to make any payment under this Agreement until an invoice which complies with clause 6.2 has been received by it from the Provider.

6.4 The Charges are inclusive of all taxation except GST. The Ministry shall be entitled to deduct any withholding tax required to be withheld by law from payments made to the Service Provider and shall not be required to gross-up or increase any such payments in respect of such amounts withheld.

6.5 Without limiting the Ministry's rights under clause 3.4, the Ministry may (acting reasonably) withhold any disputed amount until the dispute is resolved. The Ministry must pay any undisputed portion of the sum set out in each invoice by the 20th of the month following the month of receipt of the invoice.

6.6 The Ministry must reimburse the Provider for delivery costs or other expenses incurred by the Provider in providing the Goods, Services and Deliverables only if, and to the extent, set out in the relevant SOW.

7. **Term**

7.1 Subject to clauses 8.1, 8.2 and 20.2, this Agreement will commence on the date it is signed and will continue until the Completion Date set out in the Details. If any SOW is in force on the Completion Date, this Agreement will continue in respect of that SOW until provision of the relevant Goods, Services and Deliverables in accordance with this Agreement.

7.2 Each SOW commences on the date it is signed and continues for the term stated in it (if any) unless terminated earlier in accordance with that SOW or this Section B, provided that any SOW in force on the termination date of this Agreement terminates on that same date.

7.3 The provisions of this Agreement apply to Goods, Services and Deliverables provided prior to the date of this Agreement, but subsequently referred to in a SOW.

8. **Termination**

8.1 The Ministry may terminate this Agreement at any time by giving 10 Business Days notice to the Provider, regardless of whether there is a current SOW in force. To avoid doubt but subject to clause 8.3, the effect of this is that any SOW in force at the effective date of termination of this Agreement terminates on that date.

8.2 The Ministry may terminate this Agreement immediately by giving notice to the Provider, if the Provider:

- a. is in breach of any of its obligations under this Agreement and that breach is not capable of being remedied;
- b. fails to remedy any breach of its obligations under this Agreement within 5 Business Days of receipt of notice of the breach from the Ministry;
- c. does or omits to do something, or any matter concerning the Provider comes to the Ministry's attention, which in the Ministry's opinion may cause damage to the business or reputation of the Ministry or of the Government of New Zealand;
- d. has given or gives any information to the Ministry which is misleading or inaccurate in any material respect; or
- e. becomes, or in the Ministry's reasonable opinion, is likely to become insolvent, bankrupt or subject to any form of insolvency action or administration.

8.3 Where the Ministry has the right to terminate this Agreement, it may at its discretion and to the extent practicable instead of terminating the Agreement, terminate any affected SOW and any SOW the Ministry considers to be associated with that affected SOW, in whole or in part. Clauses 8.4 to 8.9 apply, with all necessary amendments, to the termination of all or part of a SOW.

8.4 Termination or expiry of this Agreement does not affect the rights and obligations of the Parties accrued up to and including the date of termination.

8.5 Within 10 Business Days of termination of this Agreement:

- a. where that termination was under clause 8.1, the Ministry must pay the Provider for:
 - i. Goods, Services and Deliverables provided in accordance with this Agreement up to the date of termination; and
 - ii. any Goods provided in accordance with this Agreement after the date of termination, where the Provider had ordered those Goods prior to receiving the Ministry's notice of termination and, despite using reasonable endeavours, is unable to cancel that order,

(provided the Provider has provided an invoice which complies with clause 6.2); and
- b. the Provider must refund to the Ministry all amounts paid by the Ministry for Goods, Services and Deliverables not provided. If the Ministry has paid a

<p>fixed Charge for any Goods, Services and Deliverables, the Provider must refund to the Ministry a portion of the fixed Charge which, in the Ministry's reasonable opinion, relates to the Goods, Services and Deliverables not provided.</p>	<p>The Provider must ensure that it operates policies and systems that promote fair and proper treatment of employees in all aspects of their employment.</p>
<p>8.6 Except to the extent the Provider is legally required to retain any Confidential Information, the Provider must, within 5 Business Days of termination or expiry of this Agreement:</p>	<p>11.1 The Provider must report on the progress of the Services and Deliverables (including, if requested, providing copies of current versions of any Deliverables) to the Ministry:</p> <ol style="list-style-type: none"> return to the Ministry: <ol style="list-style-type: none"> all Confidential Information in the Provider's possession or control; and all other property of the Ministry relating in any way to this Agreement (including documents, data, work-in-progress and materials in which the Intellectual Property Rights of the Ministry are vested and back-up copies) which is in the possession or control of the Provider or its Personnel; and/or if requested by the Ministry, destroy or erase all copies in any form of the Confidential Information or Ministry Intellectual Property and any other documents prepared by or for the Provider which contain or reflect any Confidential Information or Ministry Intellectual Property.
<p>8.7 The Provider must, if requested by the Ministry, provide the exit services set out in the relevant SOW, if any (Exit Services) before or from the termination or expiry of that SOW.</p>	<p>11.2 The Provider must:</p> <ol style="list-style-type: none"> respond promptly, accurately and adequately to any request for information made by the Ministry in relation to this Agreement, including for the purpose of enabling the Ministry to comply: <ol style="list-style-type: none"> with its obligations under the Official Information Act 1982 and the Privacy Act 1993; with its obligations to relevant Ministers of the Crown and Select Committees; and otherwise for the purpose of enabling the Ministry to comply with its internal and external reporting and accountability obligations; and ensure that all information provided to the Ministry contains sufficient content and detail to enable the Ministry to make use of the information for the purpose for which it was requested.
<p>8.8 The Ministry must, except where the Ministry has terminated under clause 8.2, pay for the Exit Services at the relevant rates set out in the SOW, up to the total maximum cap set out in that SOW for the Exit Services. To avoid doubt, the terms of this Agreement continue to apply to the Exit Services, with all necessary modification.</p>	<p>12.1 Warranty</p> <p>Each Party warrants to the other Party that it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms.</p>
<p>8.9 The provisions of this Agreement which, by their nature, are intended to survive termination or expiry, including those provisions relating to remedying deficiencies (clause 3.4), warranties (clauses 5.4 and 5.5), termination (clause 8) intellectual property (clause 13), confidentiality (clause 14), and liability and insurance (clause 16) will continue after the expiry or termination of this Agreement.</p>	<p>13.1 Intellectual Property</p> <p>The following Intellectual Property (including any modification, enhancement or derivative work of that Intellectual Property) remains the property of the current owner, regardless of its use in the Deliverables:</p> <ol style="list-style-type: none"> Intellectual Property that existed prior to the date of this Agreement; and Intellectual Property that was developed independently of this Agreement.
<p>9.1 The Provider must ensure that the Key personnel set out in the relevant SOW (if any) (Key Personnel) provide the relevant Services and Deliverables.</p>	<p>To avoid doubt, all Intellectual Property Rights in the Ministry Data (including in any modification, enhancement or derivative work of that Ministry Data) remain the property of the Ministry, regardless of its use in any Deliverables.</p>
<p>9.2 If, at any time during the term of this Agreement, any member of the Key Personnel is not available to provide the Services and Deliverables, the Provider must:</p>	<p>13.2 Subject to clauses 13.1 and 13.4 and unless stated otherwise in the relevant SOW, all new Intellectual Property Rights in the Confidential Information (including any enhancement, modification or derivative work of that Confidential Information) and any other Intellectual Property created or developed by the Provider or its Personnel in performing the Services will be owned by the Ministry from the date the Intellectual Property is created or developed. Subject to clauses 13.1 and 13.4 the Ministry</p>
<p>a. promptly notify the Ministry of the non-availability of any Key Personnel; and</p>	
<p>b. consult with the Ministry when appointing a replacement.</p>	
<p>9.3 Where the Provider appoints a new person to a Key Personnel role, it must ensure that a full and proper handover occurs between each appointee to a Key Personnel role.</p>	
<p>10.1 Good Employer</p>	

grants the Provider a revocable, transferable, royalty-free licence to use, modify, licence, market and disseminate the relevant Intellectual Property to its clients.

13.3 The Provider must not develop, create, use or provide in the course of performing this Agreement any Deliverable or other material which infringes or is likely to infringe the Intellectual Property Rights of any person.

13.4 The Provider must not incorporate any Intellectual Property owned by it or a third party into the Confidential Information or any Intellectual Property created or developed in providing the Services unless:

- the Provider's (and any third party's) Intellectual Property Rights are listed in the applicable SOW; and
- the Provider grants or obtains for the Ministry an irrevocable, transferable, perpetual, royalty-free licence to use, modify, licence, market and disseminate the relevant Intellectual Property for the purpose set out in the relevant SOW or, if there is no purpose set out, for the Ministry's general purposes, including any purpose reasonably contemplated when the Services and Deliverables were provided.

13.5 The Provider must indemnify and keep indemnified the Ministry from and against all claims, proceedings, damages, liability, loss, costs or expense (including legal costs on a solicitor own client basis) in connection with the infringement or alleged infringement of any third party's Intellectual Property Rights (IP Claim) arising out of or in connection with any Services or Deliverables provided under this Agreement, or the supply to or the possession or use by the Ministry (or its Personnel) of the Deliverables as contemplated by this Agreement.

13.6 The Provider's obligations under clause 13.5 are conditional upon the Ministry:

- promptly notifying the Provider in writing of any allegation of infringement; and
- making no admission of liability without the Provider's consent (consent not to be unreasonably withheld).

13.7 The Ministry must, at the Provider's request, allow the Provider to conduct and/or settle all negotiations and litigation and give the Provider all assistance reasonably requested by the Provider. The Provider must consult with the Ministry on the settlement or defence of IP Claims and reimburse the Ministry's reasonable costs associated with providing assistance under this clause. The costs incurred or recovered in such negotiations and litigations are for the Provider's account.

13.8 The Provider is not required to indemnify the Ministry under clause 13.5 to the extent that an IP Claim arises as a result of:

- the Ministry's breach of this Agreement; or
- modification or alteration of the Deliverables by a person other than the Provider (but only to the extent of the modification or alteration).

13.9 Without limiting the indemnity in clause 13.5 or any other rights of the Ministry under this Agreement, if at any time an IP Claim is made, or in the Provider's reasonable opinion is likely to be made, then in defence or settlement of the IP Claim, at the Ministry's request the Provider must (at the Provider's cost and option):

- obtain for the Ministry the right to continue using the items which are the subject of the IP Claim; or
- modify, replace or re-perform the items which are the subject of the IP Claim so they become non-infringing, provided that this does not detract from the performance of the Services or Deliverables.

13.10 Without limiting the Ministry's other rights and remedies, if the remedies in clause 13.9 are exhausted without remedying or settling, to the Ministry's satisfaction, the IP Claim, the Ministry may terminate this Agreement for breach under clause 8.2a.

14. Confidentiality

14.1 The Provider must, unless it has the prior written consent of the Ministry:

- keep the Confidential Information confidential at all times;
- not disclose any Confidential Information to any person other than its Personnel to whom disclosure is necessary for the purposes of providing the Goods, Services and Deliverables;
- ensure that it has in place adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons including, as a minimum, complying with the Ministry's Retention and Disposal Schedules and all relevant requirements imposed from time to time by the New Zealand Government on the holding, access, use, retention and disposal of government information;
- upon request by the Ministry, provide the Ministry with independent verification of its compliance with clause 14.1c; and
- ensure that any Personnel to whom it discloses Confidential information are aware of, and comply with, the provisions of this clause 14.

14.2 The obligations of confidentiality in clause 14.1 do not apply to any disclosure of Confidential Information:

- required by law (including under the Official Information Act 1982 and the Privacy Act 1993 or required in accordance with Parliamentary practice);
- to the extent that such disclosure is necessary for the purposes of providing the Goods, Services and Deliverables or exercising rights under this Agreement; or
- where such information has become public other than through a breach of the obligation of confidentiality in this clause 14 by the Provider, or its Personnel, or was disclosed to the Provider on a non-confidential basis by a third party who is not in breach of any obligation of confidentiality to the Ministry.

14.3 The Provider must not, without the Ministry's prior written approval:

- a. make any public statement in relation to this Agreement or the provision of the Goods, Services and Deliverables to the Ministry, including making press releases or naming the Ministry on any customer list; or
- b. offer any customer reference in relation to this Agreement.

15. Conflict of Interest

- 15.1 The Provider must maintain a high standard of honesty and integrity at all times in the performance of this Agreement and must avoid conflicts of interest. Conflicts of interest include:
 - a. situations which could give rise to a conflict of interest or compromise the Provider's or the Ministry's integrity; or
 - b. any financial or other interest or undertaking that could interfere with or compromise the performance of the Provider's obligations under this Agreement, or the integrity or standing of the Ministry.
- 15.2 Unless otherwise stated in the relevant Statement Of Work, the Provider warrants that it has no conflicts of interest at the date of each Statement of Work.
- 15.3 The Provider must advise the Ministry in writing of any actual or potential conflict of interest that might arise in the provision of the Goods, Services and Deliverables as soon as the Provider becomes aware of it, and must assist the Ministry to address or avoid or mitigate that conflict of interest.

16. Liability and Insurance

- 16.1 Except for the Ministry's liability to pay the Charges, neither Party is liable for any loss of profit, revenue, data, savings, business and/or goodwill or any other indirect, consequential or incidental loss or damage, regardless of whether the other Party had been advised of the possibility of such loss or damage.
- 16.2 Clause 16.1 does not apply to limit the Provider's liability:
 - a. under the Intellectual Property indemnity in clause 13.5;
 - b. in connection with a breach of clause 14; or
 - c. under clause 16.4
- 16.3 To the maximum extent permitted by law, the maximum liability of the Ministry under or in connection with a SOW whether arising in contract, tort (including negligence) or otherwise is the total amount which would be payable under that SOW if all Goods, Services and Deliverables had been provided in accordance with the SOW.
- 16.4 The Provider indemnifies the Ministry against any claim, liability, loss or expense, including legal fees on a solicitor own client basis (together, loss), brought or threatened against, or incurred by the Ministry, arising from fraud or wilful misconduct by the Provider or its Personnel or personal injury or death as a result of, or in connection with, an act or omission of the Provider or its Personnel in breach of this Agreement, except to the extent that loss arises out of an act or omission by the Ministry.
- 16.5 The Provider must:
 - a. at its own expense, ensure that it has in place for the term of this Agreement:
 - i. adequate insurance to cover standard commercial risks and the indemnities under this Agreement;
 - ii. adequate insurance to cover any loss or damage of the Goods in transit from the Provider to the Ministry; and
 - iii. other insurance reasonably required by the Ministry; and
 - b. upon request by the Ministry, provide the Ministry with evidence of its compliance with this clause.

17. Audit

- 17.1 At the Ministry's request, where the Provider is providing Services and Deliverables under this Agreement, the Provider must allow the Ministry (or an independent auditor nominated by the Ministry) to conduct audits of the Provider's compliance with this Agreement.
- 17.2 If an audit reveals any material non-compliance with this Agreement, the Provider must bear all of the Ministry's costs in carrying out that audit, in addition to any other rights or remedies the Ministry may have in respect of the non-compliance.
- 17.3 Without limiting clause 17.1, the Provider must co-operate in a timely manner in relation to any audit undertaken in accordance with this clause 17, including promptly providing the Ministry or the auditor (as the case may be) with reasonable access and assistance in respect of any audit, including reasonable access to the Provider, its Personnel, and the facilities, records and resources which are owned by the Provider and used in the provision of the Services and Deliverables.
- 17.4 The Ministry or the auditor (as the case may be) may make copies of any records or other information acquired by it for the purposes of any audit undertaken in accordance with this clause 15.

18. Independent Contractor

- 18.1 The Provider is engaged to provide the Goods, Services and Deliverables as an independent contractor. The Provider (including its Personnel, if any) is not an employee of the Ministry or of the Chief Executive of the Ministry. At no time will the Ministry have any liability to pay to the Provider:
 - a. holiday pay, sick pay or any other payment under the Holidays Act 2003; or
 - b. redundancy or any other form of severance pay; or
 - c. taxes or levies, including any levies under the Injury Accident Compensation Act 2001.
- 18.2 The Provider indemnifies the Ministry against any taxes, levies, penalties, damages or compensation which the Ministry may be liable to deduct, withhold or pay by reason of the Provider, or any person used by the Provider to provide the Goods, Services and Deliverables, being held to be an employee of the Ministry or of the Chief Executive of the Ministry.

19. Dispute Resolution

19.1 The Parties will attempt to resolve any dispute or difference that may arise under or in connection with this Agreement amicably and in good faith, referring the dispute to the Parties' senior managers for resolution if necessary.

19.2 If the Parties' senior managers are unable to resolve the dispute within 10 Business Days of it being referred to them, the Parties will refer the dispute to mediation or another form of alternative dispute resolution agreed between the Parties.

19.3 If a dispute is referred to mediation, the mediation will be conducted by a single mediator appointed by the Parties (or if they cannot agree, appointed by the Chair of the Resolution Institute and on the terms of the Resolution Institute's standard mediation agreement (unless the Parties agree otherwise). The Parties will pay their own costs relating to any mediation or other form of alternative dispute resolution (unless they agree otherwise).

19.4 The Parties must continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending final resolution of the dispute.

19.5 Nothing in this clause 19 precludes either Party from taking immediate steps to seek urgent relief before a New Zealand court.

20. Force Majeure

20.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of any cause or circumstance beyond the Party's reasonable control including acts of God, communication line failures, power failures, riots, strikes, lock-outs, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Agreement (**Force Majeure Event**). To avoid doubt, a Party cannot rely on this clause 20.1 to the extent that it could have avoided the effects of the Force Majeure Event by taking reasonable steps. The Party affected must:

- a. notify the other Party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome it;
- b. use its best endeavours to overcome the Force Majeure Event and minimise the loss to the other Party; and
- c. continue to perform its obligations as far as practicable.

20.2 If by reason of a Force Majeure Event a Party has been unable to perform any material obligation under this Agreement for a period of one month, the other Party may, after consulting with the Party affected by the Force Majeure Event, immediately terminate this Agreement by giving notice to that Party.

21. General

21.1 A waiver by either Party of any rights arising from any breach of any term of this Agreement will not be a continuing waiver of any other rights arising from any other breaches of the same or other terms or conditions of this Agreement. No failure or delay on the part of either Party in the exercise of any right or remedy in this Agreement will operate as a waiver. No single or partial exercise of any such right or remedy will preclude any other or further exercise of that or any other right or remedy.

21.2 Assignment:

- a. The rights and obligations of the Provider under this Agreement are personal to the Provider and may only be assigned, delegated or subcontracted with the prior approval in writing of the Ministry (which may not be unreasonably withheld or delayed). The Provider remains liable for performance of its obligations under this Agreement despite any approved assignment, subcontracting or delegation.
- b. If the Provider is a company, any transfer of shares, or any other arrangement affecting, the Provider or its holding company which results in a change in the effective control of the Provider is deemed to be an assignment subject to clause 21.2(a).

21.3 This Agreement may only be varied by agreement in writing signed by the Parties.

21.4 If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Agreement will be binding on the Parties.

21.5 Any notice to be given under this Agreement must be in writing and hand delivered or sent by email or facsimile or registered post to the Parties' respective email address, postal address or facsimile number as set out in the Details. A notice is deemed to be received:

- a. if personally delivered when delivered;
- b. if posted, three Business Days after posting;
- c. if sent by facsimile, upon production of a transmission report by the machine from which the facsimile was sent which indicates the facsimile was sent in its entirety to the facsimile number of the recipient; or
- d. if sent by email, at the time the email enters the recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error,

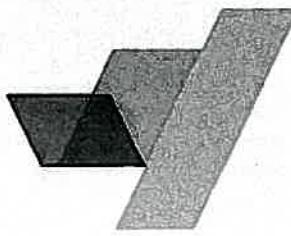
provided that any notice received after 5pm or on a day which is not a Business Day shall be deemed not to have been received until the next Business Day.

21.6 This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.

21.7 This Agreement may be signed in any number of counterparts (including facsimile copies) and provided that each Party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the Parties.

21.8 This Agreement will be governed by and construed in accordance with New Zealand law. Subject to clause 19, each

Party submits to the non-exclusive jurisdiction of the New Zealand courts in relation to any dispute connected with this Agreement.



Appendix 1: Charges

The Charges have been priced on a per course basis. Pricing and Ministry-specific discounts are based on a classroom size of 10 students. All quotes exclude GST and disbursements. Should the project scope change, the Provider will work with the Ministry to ensure an appropriate resolution can be reached.

Advanced SOCMINT Course

For a full class of students the following Charges will be applied.

Item	Students	Rate	% Discount	Total
SOCMINT Course Delivery			.20	\$6,400.00
Training Room Hire		\$990.00	.50	\$ 495.00
Total				\$6,895.00

Optional Modules - Advanced SOCMINT Course

Item	Students	Rate	% Discount	Total
SOCMINT Course Delivery			.20	\$6,400.00
Training Room Hire		\$990.00	.50	\$ 495.00
Total				\$6,895.00

Ad-hoc course delivery

The minimum class size is [REDACTED] there is no discount for the room hire for this number of people.

Item	Students	Rate	% Discount	Total
SOCMINT Course Delivery			.10	\$2,880.00
Training Room Hire		\$990.00		\$ 990.00
Total				\$3,870.00

Fixed Price Costs for Training Outside of Wellington

For courses delivered outside of Wellington, the Provider will charge the following fixed costs.

Item	Total	
Return flights to Auckland or Christchurch	\$400	
Accommodation (1 night)	\$100	
Return taxis to Wellington Airport	\$100	
Return taxis to Auckland Airport	\$200	
Food / Refreshments	\$40	
Total		\$ 840.00

SECTION C

FORM OF STATEMENT OF WORK

- *This part of the Agreement indicates the form of a Statement of Work (SOW). The Agreement does not need to include a completed SOW before it is signed, however, a SOW must be completed before the Provider starts providing any goods, services and deliverables. Once signed, each SOW becomes a binding part of the Agreement.*

STATEMENT OF WORK [insert number]

DATE:

This SOW is subject to, and forms part of, the Agreement between the parties dated 12/12/17. Terms used in this SOW have the meaning (if any) given to them in the Agreement.

1. Context and Purpose (clause 3.2, 5.4a.v, Section B)

In order to assist Ministry staff in performing their duties using social media more effectively, the Ministry has requested that training material be developed to cover tools and techniques used for gathering information from social media sources.

The objectives of the Services are to:

- Ensure Ministry staff are kept safe when using social media for work.
- Increase the knowledge of Ministry staff in respect to Social Media Intelligence (SOCMINT).
- Introduce team members to the latest open-source tools and techniques used to extract data from SOCMINT sources to support their day-to-day work activities.

2. Term of SOW (clause 7.2, Section B)

Unless terminated earlier in accordance with this Agreement, this SOW will continue until the later of:

- a. the date set out in clause 3 of this SOW for providing the Goods, Services and Deliverables; and
- b. the Provider providing the Goods, Services and Deliverables in accordance with this Agreement to the Ministry's reasonable satisfaction.

3. Services and Deliverables (clause 3, Section B)

The Provider will deliver an advanced social media training course to Ministry workers using false personas on social media for verification and investigation purposes.

In providing the Services the Provider will:

- Research topics and prepare slide deck material.
- Prepare workshop material including software and module tasks.
- Deliver course material to Ministry employees when requested.

The Provider will deliver a 1-day course on social media intelligence gathering techniques delivered as a PowerPoint presentation. The course will run from 09:00-17:00 (8 hours). All work will be conducted during normal business hours. Refreshments, snacks and lunch will be provided by the Provider for all course attendees.

The course will be run in accordance with the following table.

[Delete the table that is not applicable to the course you are requesting]

Advanced SOCMINT Course

Module	Description
<i>Social Media Intelligence Gathering</i>	
SOCMINT information sources	Details of the social media sources that can be used to build a profile on an individual
“How to....” Search SOCMINT information sources	A detailed guide as to how investigators effectively search and gather information from key social media platforms, including: 1) Facebook 2) Twitter 3) LinkedIn 4) Instagram
<i>Emerging Social Networks</i>	
Emerging Network Discovery	Sources for identifying new and emerging social networks
Investigation of new social networks	Analysis and overview of new social networks (ask.fm, kik, secret, shots, snapchat, wechat, we heart it, tinder, medium, vine, bubblews, whisper, etc.)
<i>Natural Language Processing</i>	
Identifying people by their usage of language	An introduction to the field of NLP. A look at how it can be used to identify people, along with current state of the available tools
<i>The Future of SOCMINT</i>	
Future of SOCMINT	Review what the SOCMINT landscape will look like in 10 years time. What challenges will the intelligence analyst or investigator face? What tools will they have at their disposal in order to assist in their investigations?

[Or]

Optional Module – Advanced SOCMINT Course

Topic	Description
Automated Harvesting of Content	
Methods for Automated Harvesting	Techniques for harvesting information from social networks and other sources with minimal programming knowledge
Trending and Pattern Analysis	Tools and techniques for identifying patterns in data collected from Social Media.
Pitfalls and Considerations	Issues to watch out for when automating information harvesting and solutions to these problems.
Maintaining multiple covert identities	
Detecting fake profiles	Techniques used to identify a fake profile.
Cross-posting & profile management	How to maintain multiple identities across various social networks
Profile backstopping	Techniques for creating a backstop (history) for your online personas
Anonymous cell phone numbers and email addresses	Systems and processes for sending and receiving anonymous messages (SMS and Email).
Social Media Intelligence Gathering	
Image metadata analysis	Details on how to extract meta-data from images including GPS coordinates and device information (e.g. mobile phone/camera model)
Workshop	
Creating a Dossier	During this workshop the attendees will use the skills gained during the course to create a detailed dossier on a group or individual

The Provider will provide a location to hold the training course which has the necessary seating to accommodate the numbers and a projector to display the training material.

The Provider will provide each course attendee with a computer to run the workshops on.

The minimum class size will be [REDACTED]

4. Standards for Services (clause 3.1.a, Section B)

5. **Timeframes and Milestones for Services (clause 3.1.a, Section B)**

Deliverable/Milestone	Performance standard	Due date	Amount due (ex GST)
Delivery of each separate Advanced Social Media Training Course	Delivery of the course to the standards as set out at Clause 3.1	The date for each course to be agreed in advance with the Ministry	Fees as set out at Appendix 1 - Charges

Ministry registrants who are unable to attend the course may choose to have another person attend in their place.

Cancellation by the Ministry

The Ministry may cancel or reschedule a confirmed training by submitting an email request to [@zxsecurity.co.nz.](mailto:@zxsecurity.co.nz)

All cancellation requests must be submitted within 30 calendar days of registration and no later than 15 days prior to the scheduled course date.

The Ministry will be required to pay the Charges in full if Ministry staff fail to attend the course without sending a cancellation request in accordance with the above terms.

Cancellation by the Provider

The Provider reserves the right to cancel any training course if the minimum class size is not reached at least 30 calendar days in advance of the scheduled course date. Notice will be provided with the option to reschedule for a future course date or to receive a full refund of registration fees.

The Provider is not responsible for any expenses incurred by the customer if a training course is cancelled in accordance with this SOW.

If a training class is cancelled due to any Force Majeure Event such as weather or natural disaster, the Ministry is entitled to reschedule for a future training course at no additional cost.

6. **Charges for Services (clause 6.1, Section B)**

Fixed Charge of \$[X] plus GST (if any). *[To be calculated based on Appendix 1 to Section b]*

7. **Invoice Terms (clause 6.2, Section B)**

The Provider will provide an invoice to the Ministry on completion of the Services and supply of the Deliverables to the Ministry's satisfaction.

8. **Expenses incurred in providing Services and Deliverables (clause 6.6, Section B)**

For courses delivered outside of Wellington the Ministry will reimburse the following expenses up to the limits set out for each matter in the Agreement:

Accommodation	-	\$[X]
Airfares	-	\$[X]
Food/refreshments	-	\$[X]
Taxis - Wellington	-	\$[X]
Taxis - Auckland	-	\$[X]

The Ministry is not obliged to pay for any expense item once the applicable expense limit is exceeded.

9. Reporting Requirements (clause 11.1, Section B)

Following each course, within two weeks of the course, a report setting out attendance, engagement by participants and the Provider's estimation of the level of understanding of the participants plus any refinement to the content or scope of the course recommended by the Provider.

10. Provider's and/or Third Parties' Pre-existing Intellectual Property Rights (clause 13.4, Section B)

Training course slide decks have already been developed and remain the Intellectual Property of ZX Security.

11. Key Personnel (clause 9, Section B)

Name	Role	
Security Consultant	Simon Howard	ZX Security Limited
Security Consultant	David Robinson	ZX Security Limited

SIGNED

Signed for and on behalf of **HER MAJESTY THE QUEEN**)
 in right of New Zealand by Shayne Gray, General)
 Manager, Service Quality Branch, Market Service)
 Group, Ministry of Business, Innovation and)
 Employment:



Signature

Date: 12 Dec 17

Signed for and on behalf of **ZX Security Limited** by:



Signature

Simon Howard

Print Full Name

Director

Print Title

Date: 12/12/17